

Application No. 10/804,201  
Atty. Dkt. No. C261 1080.1 (51081.0008.9)

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#### Remarks

The claims as proposed to be amended are directed to isolated compounds, methods for treating *Vibrio cholerae* infections using the compounds, and processes for isolating the compounds. Claim 1 is directed to an isolated compound, Claim 2 is directed to a method of treating a *Vibrio cholerae* infection, and Claim 3 is directed to a method of preparing the compound from a *Penicillium chrysogenum* bearing accession No. MTCC 5108.

Claims 1 and 3 have been amended to clarify the chemical structure, to remove the reference to the Figure, and to include a period at the end of the sentence, as suggested by the Examiner. Claim 3 has also been amended to incorporate the limitations of Claim 15, and Claim 15 has been withdrawn. These amendments are clearly supported by the application as filed, and thus do not add new matter.

#### Rejections under 35 U.S.C. 112, First and Second Paragraph

Claims 1-15 were rejected under 35 U.S.C. 112, second paragraph, as indefinite.

Claims 1 and 3 were rejected on the basis that the structure was not legible enough, there was no need to refer to Figure 1, and a sentence was required at the end of the claim. Claims 1 and 3 have been amended to include a clearer chemical structure, to delete reference to the figure, and to put a period at the end of the sentence. These amendments are believed to obviate this ground of rejection.

Claims 1-15 were also rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The Examiner stated that, while Applicants identified the depository as one recognized by the Budapest treaty, this is not enough to comply with the enablement requirements as set forth in MPEP 2404.01, p.2400-6 (Aug 2001 ed)). That is, even a deposit made under the Budapest Treaty and referenced in a U.S. or foreign patent would not necessarily meet the test for known and readily available unless the deposit was made under conditions that are consistent with those specified in these rules, including the provision that requires, with one possible exception (37 CFR 1.808 (b)), that all restrictions on accessibility be irrevocably removed by the Applicant upon the granting of the patent.

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Evidence that the deposit satisfies these requirements will be provided by way of a Declaration by Chandrakant Govind Naik, one of the inventors. The submission of the Declaration should obviate this ground of rejection. The undersigned attorney discussed the issue of the Declaration with the Examiner, who indicated that it would be acceptable to file a Notice of Appeal at this time, and submit the Declaration in due course to obviate the rejection. The Declaration will ideally be executed by the inventor in the very near future, and will be submitted as soon as possible upon receipt.

Claims 3-14 were rejected under 35 U.S.C. 112, first paragraph, as non-enabled. The purported basis for the rejection is that the Examiner believes the specification only enabled for isolation of the claimed compound from specific fungi, which fungi are extracted from a specific leaves (from the mangrove plant). This rejection is respectfully traversed if applied to the amended claims.

Claim 3 has been amended to incorporate the limitations of Claim 15 (i.e., to specify that the *Penicillium chrysogenum* is *Penicillium chrysogenum*, bearing accession No. MTCC 5108.). Claim 15 has been cancelled. Applicants reserve the right to pursue claims to the subject matter of Claim 3, prior to entry of this amendment, in a related continuation or divisional application.

Applicants respectfully request that this ground of rejection be withdrawn in light of the amendment presented herein.

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### Conclusion

It is believed that the claims will be in condition for allowance upon submission of the Declaration, and such action is respectfully requested at that time. No fee is believed to be due for this submission, other than the fee for the Notice of Appeal and the fee for the Extension of Time. Should a fee be required, the Director is authorized to charge any such fee to Womble Carlyle's Deposit Account No. 09-0528.

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Respectfully submitted,

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